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## TRANSMITTAL FORM

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		Application Number	09/492,811
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		First Named Inventor	John W. Becker
		Group Art Unit	3721
		Examiner Name	H. Desai
Total Number of Pages in This Submission	4	Attorney Docket Number	7436.100

### ENCLOSURES (check all that apply)

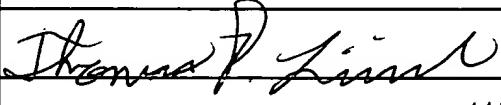
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Firm or Individual name	Thomas P. Liniak
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Date	11/26/2002

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THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

John W. Becker : Attorney Dkt. No. 7436.100A

For: METHOD AND APPARATUS FOR : Group Art Unit: 3721  
PACKING PERISHABLE GOODS

: Examiner: H. Desai

Serial No. 09/492,811 :

Filed: January 28, 2000 :  
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Sir:

November 26, 2002

**RESPONSE AND REQUEST FOR RECONSIDERATION**

This is in response to the Office Action dated September 16, 2002. At the outset, the Applicant would like to express its appreciation for the courtesies granted to Applicant's attorney in the interview conducted November 21, 2002 with Examiners Desai and Sipos.

Claims 13-20 and 22-51 remain pending in the application. Pending claims 13-20 and 22-51 were rejected under 35 U.S.C. § 102(b) as being anticipated by Shea (U.S. Patent No. 5,314,087). In the alternative, claims 13-45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Shea in view of Aghassipour (U.S. Patent No. 5,595,320), and further in view of McCord (U.S. Patent No. 728,749). These rejections are respectfully traversed in view of the following comments.

Every pending claim requires a top formed from at least one flap where the flap is integral with a sidewall, specifically pending claims 13-20, 22-33, 37-42 and 46-51 require a top

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formed from first and second side flaps and front and back flaps, where the flaps are integral with the first and second sidewalls, the front end and the back end respectively. Pending claims 34-36 require a top form from first and second side flaps where the side flaps are integral with the first and second sidewalls respectively. Pending claims 43-45 require a top formed from a flap that is integral with a sidewall.

None of the asserted prior art teaches a top made from a flap that is integral with at least one of the sidewalls, the front end or the back end. Shea '087 teaches only a separate lid that rests upon an open area of the inner liner. (See lid 15 in Fig. 2 and lid 4 in Fig. 4). Aghassipour '320 teaches an insulating bag that always has one open and one closed end. It fails to teach any type of flap that would form the top for the insulating bag. McCord '749 also teaches a separate lid "B" that is placed on top of the sidewalls. As a result, none of the references asserted taken alone or in combination teach or suggest the use of specific elements of the claimed invention (i.e. the top), therefore the rejection of these claims must be withdrawn.

It is also noted that claims 13-20, 22-33, 37-42 and 46-51 require sidewalls and front and back walls "forming an integral moisture proof seal with said bottom and each other." Pending claims 34-36 require "first and second sidewalls forming an integral moisture proof seal with said bottom and each other." Likewise, claim 43 requires a "sidewall forming an integral moisture proof seal with and along said entire periphery of said bottom."

In view of the foregoing limitations of the currently pending claims, it is respectfully submitted that any combination of the prior art of record would likewise fail to meet the limitations of the "top" and "integral moisture proof seal" required by all of the pending claims. There is simply no teaching or suggestion of this construction in any of the cited references. McCord, for example, teaches foldable pasteboard boxes such as commonly used by milliners

for holding ladies hats and bonnets. McCord nowhere states that his collapsible box construction is to be utilized, or for that matter, capable of being utilized to transport sensitive contents in a moisture controlled environment such as the present invention.

Additionally, many of the features of the defendant claims are likewise not taught or rendered obvious by the prior art, taken alone or in combination. For example, defendant claim 18 recites “a selectable and resealable means for securing a portion of said first side flap to a portion of said second side flap”, and defendant claim 19 recites “a means for sealing said top.” These features are not shown or suggested in the prior art. Claims 27 and 41 recite “the height of said first and second sidewalls, said front and back walls and said first, second front and back flaps is selectively adjustable.” The features of these claims are nowhere disclosed or suggested in the prior art.

Dependant claims 48 and 49 teach an arrangement where a portion of the inner container is in “direct contact” with the outer container when it is inserted in the outer container. Shea explicitly teaches away from the arrangement of claims 48 and 49. Any modification of Shea in this regard would impermissibly destroy the intended purpose of the invention and function thereof. This is because Shea requires a “spacer tray 3” to provide a partially surrounding layer of air 11 that “allows further maximization of the thermal containment properties of the radiant barrier material.” (See col. 3, lines 59-63 of Shea ‘087). Aghassipour and McCord do not teach any arrangement where an inner insulating container fits into an outer container.

The Shea reference likewise does not have any teaching or suggesting of combining the structure or properties of the inner liner with either the outer container or the inner liner into a single container. In fact, the entire teaching of the Shea reference is completely away from this concept. For example, when only the inner liner is used without the inner container, a spacer is

used, then Shea teaches in stark contrast to Applicant's invention that there should be no direct contact of the insulation with the outer paper board container (See e.g. col. 1, lines 22-28; col. 3, lines 59-61 and col. 4).

In summary, it is submitted that the inner liner of Shea does not teach integral, foldable, side, front or back flaps that fold to provide a top as in the claims of the present invention. Shea also teaches directly away from an arrangement where the inner liner is in direct contact with the outer container. Shea, furthermore does not teach that the height of the flaps and sidewalls is selectively adjustable and in contrast requires the radiant barrier material to be loosely encased in a pouch so that it can float therein in contrast to the present invention which requires the barrier material to be stationary and extend through the entire sidewall and flap as in the present invention (See e.g. claims 49-51).

The Aghassipour and McCord references cited by the Examiner, likewise provide no teaching or suggestion to make up for the above listed deficiencies in the Shea reference.

Applicant respectfully submits that all claims are in condition for allowance and respectfully requests same. If the Examiner has any questions concerning this Response he is invited to contact Applicant's attorney at the below listed telephone number.

Respectfully submitted,

Date: 11/26/02

  
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